

1989

State of Utah, by and through Utah State
Department of Social Services v. Criag Mismash :
Brief of Respondent

Utah Court of Appeals

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BRIEF

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

DOCKET NO. 89-0477

STATE OF UTAH, by and through
Utah State Department of
Social Services,

Plaintiff/Respondent

CRAIG MISMASH,

Defendant/Appellant.

Priority #10

Case Number: 890477-CA

Court of Appeals Number:
890477-CA

BRIEF OF RESPONDENT

Appeal from a denial of Defendant/Appellant's Motion for
Summary Judgment of the Third District Court
in and for Salt Lake County, State of Utah
The Honorable Raymond S. Uno

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Utah State Department of)	
Social Services,)	
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BRIEF OF RESPONDENT

COMES NOW THE RESPONDENT/PLAINTIFF to the above entitled action, by and through counsel and hereby submits the Respondent's brief in this matter:

NATURE OF PROCEEDINGS AND JURISDICTION

Defendant/Appellant is appealing a District Court order, denying its Motion for Summary Judgment in a case brought by the State of Utah, Department of Social Services to establish paternity and collect child support from the Defendant/appellant. Defendant/appellant makes the same argument on appeal as he made before the trial court: that this paternity suit should be dismissed with prejudice based upon the affirmative defense of laches.

The Court of Appeals has jurisdiction pursuant to U.C.A. 78-2a-3(2)(h).

STATEMENT OF ISSUES ON APPEAL

1. Did the District Court properly deny the defendant's Motion for Summary Judgment on the issue of laches?
2. Should laches ever be an available defense in a paternity action when the suit is brought before the child that is the subject of the litigation reaches the age of majority?

DETERMINATIVE PROVISIONS

Rules 8(c) and 56(c) of the Utah Rules of Civil Procedures are determinative of issue number one in this appeal.

STATEMENT OF THE CASE

The State of Utah had great difficulty locating defendant/appellant in 1972 when the subject child was born. The State finally located him in 1978 and promptly filed a paternity suit against the Appellant/Defendant that same year. Appellant/Defendant answered the complaint and was represented by his attorney Matt Biljanic. However, Appellant/Defendant refused to comply with the court's blood test order. Finally, Matt Biljanic withdrew from representing appellant/defendant because he was uncooperative. (R. 7). For procedural reasons, the State was unable to obtain a default paternity judgment.

The State was unable to locate defendant/appellant until 1984, when the State promptly filed another petition for paternity. After several attempts, the case was dismissed for lack of personal service. Finally, in 1987 this suit was filed and the State obtained personal service over the defendant/appellant.

During the period from June 1979 through August 1986, the mother of the child in question went off public assistance several times and would not fully cooperate with the State of Utah. The State could not proceed without her cooperation. Presently, the mother is very cooperative and wishes to finally resolve all issues as soon as possible.

The trial court noted that the State of Utah had made reasonable efforts to establish paternity, but was unable to do so at an earlier date due partly to the actions of the defendant/appellant. (R. 15)

SUMMARY OF ARGUMENT

Defendant/appellant failed to show the nonexistence of certain issues of fact that were necessary to support his claim of laches. Defendant/appellant had the burden of proving certain facts to support his defense. However, not only did he fail to submit any factual evidence to support his claim, but the evidence that was submitted unequivocally supports the State's assertion that laches does not apply in this case.

Further, laches should never be a defense in a paternity proceeding that is brought when the subject child is a minor because of the inherent rights of the child and the State that are involved in a paternity proceeding.

ARGUMENT

The District Court order should be affirmed for the following reasons:

POINT ONE

MATERIAL ISSUES OF FACT EXIST WHICH PREVENTED THE DISTRICT COURT FROM RULING AS A MATTER OF LAW ON THE ISSUE OF LACHES

The record from the lower court clearly reveals that many issues of material fact exist in this case. The Utah Supreme Court ruled years ago that a summary judgment movant must show that no genuine issue as to any material fact exists. Young v. Felornia, 121 Utah 646, 244 P.2d 862 (1952). However, the State provided credible evidence that it did not unreasonably delay this matter, but that it is the defendant who has continually delayed these proceedings (R. 7).

The State showed to the District Court that this matter would have been resolved in 1978. However, the appellant/defendant refused to even cooperate with his own attorney in addition to the District Court and the State. (R. 7) The State further showed that the mother did not always cooperate with the State which further inhibited the State's ability to pursue this matter.

Appellant/defendant clearly misrepresents the record of the lower court by alleging in his brief "no one had ever approached him claiming he was the father" of the subject child. (Appellant Brief page 5). He would have this Court believe that the State did nothing to resolve this paternity issue. However, appellant/defendant counsel admitted to the lower court that the State had pursued him well before 1987 (R. 13).

Further, Appellant/defendant does not cite to the lower court's record in support of any of his contentions on this appeal as required by Rule 24(e) of the Rules of the Utah Court of Appeals. However, it is very clear from the record that the State did not delay unreasonably in bringing this action (R. 15).

The trial court found specifically that the Appellant/defendant actually delayed this matter (R. 15). It is a well known maxim in courts of equity that a person who causes a delay cannot claim prejudice from such a delay. [See In Re Estate of Novolich, 500 P.2d 1297 at 1301 (Wa. App. 1972) and Newton v. Hornblower, Inc., 582 P.2d 1136 at 1145 (Kan. 1978)]. It is therefore, very clear that summary judgment in favor of appellant was not warranted.

POINT TWO

APPELLANT FAILED TO ESTABLISH FACTS NECESSARY TO SUPPORT HIS AFFIRMATIVE DEFENSE OF LACHES

Rule 8(c) of the Utah Rules of Civil Procedure specifically states that Laches must be pleaded as an affirmative defense. Rule 56(c) further states,

...The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions of file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law....

Utah Rules of Civil Procedure, Rule 56(c) 1953, as amended. Inherent in both of these rules, with respect to asserting an equitable defense, is the requirement of the moving party to prove the facts necessary to establish, as a matter of law, the

affirmative defense of laches. However, appellant failed to properly even allege the facts necessary to establish his laches defense.

Appellant must first allege that the State unreasonably delayed initiating these proceedings and that such delay has prejudiced appellant's position at trial. However, appellant failed to rely upon any discovery, affidavits, or admissible evidence either establishes or alleges that the State unreasonably delayed causing prejudice to appellant. Therefore, in reality, appellants motion of summary judgment was identical to a motion to dismiss under Rule 12 of the Utah Rules of Civil Procedure.

However, appellant's answer to the State's complaint fails to allege and certainly fails to establish an unreasonable delay causing prejudice to appellant. A party cannot merely allege that a claim is barred by the equitable doctrine of laches, as appellant does, and expect to prevail on an affirmative defense. The Utah Supreme Court has ruled that bare contentions cannot resolve issues of fact crucial to the resolution of the case. Frisbee b. K & K Const. Co., 676 P.2d 387 at 390 (Utah 1984).

Case law is clear that a party may bring a motion to dismiss based upon laches, but only if the pleadings clearly show unreasonable delay plus prejudice. Conti v. Board of Civil Service Commissioners, 461 P.2d 617 at 624 (CA 1969).

Because appellant failed to even alleged through his pleadings, discovery, affidavits, or other admissible evidence, the District Court had no choice, but to deny his motion for

Summary Judgment. Appellant's mere proffering of alleged facts through his attorney is insufficient.

Further, Appellant's proffer of prejudice is irrelevant to a laches defense. Appellant continues to allege that he has been prejudiced because he lost several years of visitation with the subject. However, the only prejudice that is relevant to a laches claim is the kind that harms a person's position at trial. However, appellant has not petitioned the Court for visitation. Therefore, appellant's proffer of alleged facts is insufficient to establish anything as a matter of law and it is also irrelevant to the issue of prejudice.

At best appellant only raised more issues of fact in this proceeding. However, it is very clear that summary judgment is not used to determine facts, but only to ascertain whether there are any material issues of fact in dispute. Hill ex rel. Fogel v. Grand Cent., Inc., 25 Utah 2d 121, 477 P.2d 150 (1970). Moreover, appellant cannot cite any authority to support his position.

Appellant/defendant only cites two cases in his brief, neither of which support his position. One case deals with commercial matters. The other case, Borland v. Chandler, only states that laches may apply to a case at law, but the court refused to apply laches to the paternity proceeding before the court. Borland v. Chandler, 733 P.2d 144 at 146 (Utah 1987). However, all cases on the subject hold that the party asserting laches must show that a party unreasonably delayed and that such delay will prejudice another party's case at trial.

Appellant failed to establish or even allege unreasonable delay or prejudice, therefore, the trial court's ruling is proper.

POINT THREE

THERE ARE MANY LEGAL AND EQUITABLE REASONS WHY LACHES SHOULD NEVER BE AN AVAILABLE DEFENSE IN A PATERNITY PROCEEDING THAT IS BROUGHT WHEN THE SUBJECT CHILD IS A MINOR

Respondent is unaware, after extensive research, of any cases in the United States where a paternity action was barred or dismissed based upon the equitable doctrine of laches. Most jurisdictions realize that while laches may apply generally to actions at law or equity, important legal and equitable reasons should prevent its application in certain clear categories of cases.

The first and most important reason why laches should never be a defense in a paternity proceeding brought while the child is a minor is that the interest of the child and society are harmed. If laches is a successful defense a child could be deprived of its ability to obtain past, present, and future child support. Society is in turn harmed because it is the policy of this State to require that every father support his children (see generally U.C.A. 78-45-3).

The state and the mother are, in the vast majority of cases, the only possible persons who will ever pursue a putative father to gain support for the child. Further, Utah Courts have on several occasions ruled that child support is a right owed to the child, and not the custodial parent. Race v. Race, 740 P.2d 253

at 256 (Utah 1987). Therefore, equity should preclude a ruling where actions of the state or the mother prejudice the rights of child.

Many states have specifically ruled that laches is not available in a paternity proceeding because of the interests of the child that are involved. A Washington court ruled that laches did not bar a paternity action first commenced 13 years after the birth of the subject child. Nettles v. Beckley, 648 P.2d 508 at 510 (Wash. App. 1982). The court held:

The right of an illegitimate child to assert a claim for parental support is too fundamental to permit its forfeiture by its mother's failure to timely institute a paternity suit. (Emphasis added)

Id. at 510. Washington is one example among many states that will not allow laches to bar paternity suit. Utah is certainly no less protective of its children. Therefore, laches should not be available in a paternity proceeding in Utah.

Second, many states have refused to allow a laches defense to a statutory proceeding before the applicable statute of limitations has run. The logic behind this view is that laches is a defense that was previously only applicable to equity proceedings where statutes of limitations do not exist. However, in cases at law, such as this paternity proceeding, specified statutory limits exist to protect a party against delay.

Since courts of equity and law have merged, an incongruity exists in certain areas as is the case of laches and the statute of limitations. Both purport to prevent stale claims. However,

because many courts have ruled that a party has a right to rely upon the time period prescribed by law, many jurisdictions have simply ruled that laches only applies to a proceeding that may be somehow brought after the applicable statute of limitations has run.

In a divorce proceeding to collect past due child support a Washington court ruled, "absent unusual circumstances, the doctrine of laches should not be invoked to bar an action short of the applicable statute of limitation." Hunter v. Hunter, 758 P.2d 1019 at 1023 (Wash. App. 1988). See generally 30A C.J.S. Section 131.

Further, even states that have not fully merged equitable and legal defenses will apply the applicable statute of limitations by analogy when determining the issue of delay in a laches defense. See Rise v. Steckel, 652 P.2d 364 at 370 (Or. App. 1982).

In Utah, as in most states, the statute of limitations for bringing a paternity suit is tolled while the subject child is a minor. The only applicable statute that governs limitations in a paternity proceeding is U.C.A. 78-45-3 which limits a putative father's liability for past support to four years preceding the filing of the complaint. Although this statute does not affect when a suit may be brought, it does protect a putative father from having a judgment entered against him for 18 years of past support.

While Utah does not have a specific provision dictating when a paternity proceeding must be commenced, the Utah Supreme Court

ruled that whatever period may apply shall be tolled while the child is a minor. Szarak v. Sandolval, 636 P.2d 1082 at 1084 (Utah 1981). Therefore, if the applicable period is four years, a paternity proceeding may be commenced before the child reaches the age of 22.

If by law, in a statutory paternity proceeding, the statute of limitations is tolled until the child reaches the age of majority, a party should not be allowed to circumvent such a law by asserting that the suit should be barred on equitable grounds after only 13 years.

This is much legal authority across the country that supports that laches should never apply to a statutory cause of action. However, the State only asking that the Court of Appeals rule that laches is not available in a paternity proceeding commenced while the child is a minor. Such a ruling would be congruent with and based upon the same reasoning as was applied to the tolling of the statute of limitations in paternity actions.

Finally, laches should never be applied to bar the state from enforcing public welfare laws. The Supreme Court of Oregon summed this principle best ruling,

By the great weight of authority in this country the defense of laches is not available against the government, state or national, in a suit by it to enforce a public right or protect a public interest....

Corvallis Sand & Gravel Co v. State Land Board, 439 P.2d 575 at 581 (OR 1967). See also Big Piney Oil & Gas v. Wyoming Oil & Gas, 715 P.2d 557 at 560 (WY 1986) and Arizona Law Enforcement Merit System v. Dann, 652 P.2d 168 at 172 (Ariz. App. 1982).

Because it is the policy of this state, supported by state law and federal regulations, to collect support from putative fathers and because such collection help to reduce the tax burden of Utah citizens, laches should never bar a claim brought by the State to obtain reimbursement of public assistance monies expended and to collect child support for a custodial parent.

CONCLUSION

Appellant failed to show the nonexistence of issues of material facts necessary to support his claim for laches. Further, appellant failed to properly allege facts necessary to support an affirmative defense. Therefore, the trial court clearly was well within his discretionary powers by denying appellant/defendant's motion for summary judgment based upon laches.

In addition to the facts of this particular case, laches should never apply to any paternity proceeding commenced while the subject child is a minor. If laches prevails, it is the child and society that are harmed, not the mother or the Department of Social Services. The same reasons underlying the tolling of the statute of limitations in a paternity proceeding are applicable to a claim for laches.

WHEREFORE: Respondent/plaintiff respectfully asks this court to uphold the lower courts denial of Appellant/defendant's motion for summary judgment and further asks this court to rule that laches is not available in a paternity proceeding commenced when the subject child is a minor.

RESPECTFULLY SUBMITTED this 2nd day January, 1990.

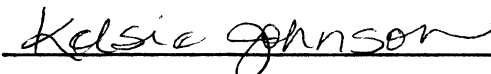

FRANK D. MYLAR
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF MAILING

I hereby certify that I mailed three true and exact copy of the foregoing, postage prepaid, to the following address:

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DATED this 2 day of Jan., 19⁹⁰~~89~~.


Kelsie Johnson